UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEVON ALEKSANIAN, JAKIR HOSSAIN, and
NEW YORK TAXI WORKERS ALLIANCE,

Plaintiffs,

-Against-

ANDREW CUOMO, GOVERNOR OF THE STATE OF NEW YORK, THE NEW YORK STATE DEPARTMENT OF LABOR, and ROBERTA REARDON, as COMMISSIONER OF LABOR,

Defendants

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TO BE FILED BY E.C.F.

1:16-cv-16-04183-JLG-RLM

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL OF THE COMPLAINT**

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Plaintiffs submit this Memorandum of Law in Opposition to Defendants' Motion for Dismissal of the Complaint.

## PRELIMINARY STATEMENT

Plaintiffs bring this case to challenge New York State's refusal to investigate or adjudicate claims for unemployment insurance benefits ("UI") by Plaintiffs Aleksanian and Hossain ("Individual Plaintiffs") and all former Uber drivers, including members of Plaintiff New York Taxi Workers Alliance ("NYTWA"). Plaintiffs seek a judgment ordering Defendants to immediately investigate and adjudicate all Uber drivers' applications and claims for UI benefits and declaring that Defendants' actions violate Title III of the Social Security Act of 1935, 42 U.S.C. §§501-504, the Equal Protection Clause of the United States Constitution, and the Due Process Clause of the United States Constitution.

Defendants' motion to dismiss, arguing that Plaintiffs' claims are moot, that the NYTWA lacks standing to bring this litigation, and that the Eleventh Amendment bars claims against the New York Department of Labor (DOL), should be denied. First, Defendants have not met the formidable burden of showing that their illegal hold on UI applications for Uber drivers has ceased and could not reasonably be expected to recur. Therefore, Plaintiffs' claims cannot be considered moot. Second, the NYTWA has standing to bring this action because the Defendants' failure to investigate and adjudicate Uber drivers' UI claims injures the NYTWA, which expends scarce time and resources assisting its members, 5,000 of whom drive for Uber, with their UI claims. Third, the Eleventh Amendment does not bar Plaintiffs' claims against Defendants Reardon and Cuomo. Therefore, the Court should deny Defendants' motion to dismiss.

## STATEMENT OF FACTS

Individual Plaintiffs Levon Aleksanian and Jakir Hossain ("Individual Plaintiffs") worked as drivers for Uber in New York City. Complaint ¶24. Individual Plaintiffs lost their employment with Uber and applied for UI. *Id.* Individual Plaintiffs' primary job duty was to drive Uber customers from a pick-up point to a drop-off point in the City of New York and the surrounding areas. *Id.* ¶26. Individual Plaintiffs received assignments through the use of the Uber application (hereinafter "app") on their cell phones. *Id.*

Uber is a corporation offering Black Car transportation service. *Id.* ¶25. Uber's New York City operations are dispatched through several wholly owned subsidiaries which hold a Taxi & Limousine Commission (TLC) issued license to operate a For-Hire Vehicle (FHV) Base that dispatches "Black Cars," a sub-category of FHV service. *Id.* Uber does not consider the Individual Plaintiffs or any of its drivers to be employees even though Uber exercises substantial supervision, direction, and control over its drivers. *Id.* ¶27.

**PLAINTIFF LEVON ALEKSANIAN**

Plaintiff Levon Aleksanian was a driver for Uber from August, 2014 through September 7, 2015. *Id.* ¶41. When Plaintiff Aleksanian attempted to log in to the Uber App on September 9, 2015, he found that his account had been deactivated. Id. ¶47. On or about September 9, 2015, Plaintiff Aleksanian went to the TLC to inquire about his TLC license and was told that it had been revoked. *Id.* ¶48 Prior to September 9, 2015, Plaintiff Aleksanian did not know that his TLC license had been revoked. *Id.*

On or about September 14, 2015, Plaintiff Aleksanian applied for UI by submitting an online application on the website of the DOL from his home in Queens, New York. *Id.* ¶49. Within a week or two after applying for UI, Plaintiff Aleksanian received a monetary benefit determination (MBD) from the DOL which notified him that he did not have sufficient wages to establish a UI claim. *Id.* ¶50. The MBD did not include wages from his prior employers, Corporate Transportation Group and Uber. *Id.* After receiving the MBD, Mr. Aleksanian submitted to DOL proof of wages received from Corporate Transportation Group and Uber on a standard form requesting that the DOL reconsider its prior MBD. *Id.* The DOL then sent the claimant questionnaires regarding his former employers. *Id.* The questionnaires asked Mr. Aleksanian a series of questions including questions pertaining to whether he was an employee or an independent contractor for his former employers. *Id.* Plaintiff Aleksanian answered the questions and returned the questionnaires to DOL in September and October, 2015. *Id.* Plaintiff submitted his questionnaire regarding his employment with Uber by emailing it to Karen Schapley, a Labor Services Representative from the DOL, on October 27, 2015. *Id.*

On November 16, 2015, Plaintiff Aleksanian sent an e-mail to Ms. Schapley asking why his case was still pending when he had applied for UI benefits two months prior. *Id.* ¶51. Ms. Schapley replied the following day, and provided a 40-day timeframe for the DOL's investigation of Mr. Aleksanian's claim. *Id.*¶*52.* Plaintiff Aleksanian received a revised MBD from the Department of Labor dated December 3, 2015. Id. ¶53. The MBD stated that "our records show that in the base period indicated you do not have the required employment and earnings to establish an unemployment insurance claim." Id. The December 3, 2015 notice also stated that Plaintiff's base period employment with "Corporate Transportation Group LTD" cannot be used to establish entitlement pursuant to Section(s) 511 of the New York State Unemployment Insurance Law because the services performed were considered to be those of an independent contractor. *Id.* In addition, the December 3, 2015 notice stated "we are still working on UBER Technologies."*Id.*

After receiving the December 3, 2015 notice stating that the DOL was still working on his UI claim as it related to Uber, Plaintiff Aleksanian expected that he would receive another notice regarding whether his Uber earnings would make him eligible for UI, consistent with the December 3, 2015 notice. *Id.* ¶54. When Plaintiff Aleksanian did not hear back from the DOL, he called the DOL to find out why he had not received any further notice regarding his UI claim for benefits. *Id.* ¶55. He reached out to the DOL several times to find out about the status of his UI application. *Id.*

On February 10, 2016, Ms. Schapley sent an email to Plaintiff Aleksanian which stated the following:

> I received your telephone message (2/9/16 4:42 pm). I have gone to my supervisor with your concern, and we went to our manager. He contacted our Director for an explanation regarding the situation with Uber. The information that was given to us was that it is not within the NYS Unemployment Insurance Division to make the decision as to whether the wages with Uber can be used in a claim. That is a separate division and that, right now, it is under Executive review. All Uber claims we have are under Executive review. Once that decision is made and we are given it, we can complete your claim. Please continue to certify for each week you wish to claim benefits. *Id.* ¶56.

Plaintiff Aleksanian wrote back to Ms. Schapley later that day asking who was doing the executive review and asked to speak with Ms. Schapley's supervisor or manager. *Id.* ¶57. Lori Mocniak, the Supervising Labor Services Representative for DOL, responded to Plaintiff Aleksanian's email on February 10, 2016 and stated:

> I understand you are frustrated over this process. Unfortunately, there is nothing new I can tell you. I have discussed claims filed against UBER with my manager and the Director of our call center. The information we are being given is these claims (not just yours) are under executive review, which means the Dept of Labor is not making the decision whether or not this employment is covered. Your claim will remain pending until such time a determination has been made. *Id.* ¶58.

After obtaining counsel, on May 2, 2016 Mr. Aleksanian requested a hearing to challenge the monetary determination dated December 3, 2015 classifying his earnings from Corporate

Transportation Inc. as earnings from work as an independent contractor. *Id.* ¶59. In a letter dated May 18, 2016 to Plaintiff Aleksanian, the DOL stated that the Commissioner of Labor was withdrawing the December 3, 2015 determination in order to conduct further fact finding. *Id.*

Until late May, 2016 when he began working part-time as a home health aide, Mr. Aleksanian was completely unemployed. *Id.* ¶61. Mr. Aleksanian has a wife and baby to support. *Id.* ¶62 In order to cover his family's living expenses while unemployed, Mr. Aleksanian borrowed money through his credit cards, accruing over $6,000 in debt. *Id.*

According to the UI Claimant's Handbook, it takes three to six weeks from the time a claim is filed to the time that claimants generally receive their first payment of benefits. Id. ¶22. However, plaintiff Aleksanian did not receive a determination on his UI claim until August 5, 2016, more than 10 months after he applied for UI. *See* Affidavit of Thomas Neumann (submitted by the Defendants in support of their motion)¶3.

**PLAINTIFF JAKIR HOSSAIN**

Plaintiff Jakir Hossain was a driver for Uber from January, 2016 until April 25, 2016. Complaint ¶63. Plaintiff Hossain was terminated by Uber on April 25, 2015 via email. *Id.* ¶67. Plaintiff Hossain applied for UI benefits on or about May 2, 2015 by submitting an online application on the website of the DOL from the offices of his attorneys in Brooklyn, New York. *Id.* ¶68. Plaintiff received an MBD dated May 12, 2016 which stated that he did not have sufficient wages to qualify monetarily for UI benefits. *Id.* ¶69. The May 12, 2016 MBD failed to list the wages that he received from his work for Lyft and for Uber. *Id.* On or about May 24, 2016, Plaintiff Hossain submitted a Request for Reconsideration of the May 12, 2016 MBD which contained proof of his earnings for Lyft and Uber. *Id.* ¶70.

On or about May 27, 2016, Plaintiff Hossain received a letter from the DOL asking him to contact the telephone claims center "to add employer Uber." *Id.* ¶71. The Plaintiff contacted the telephone claims center and told them that he had provided proof of his Uber earnings. *Id.* While waiting for the DOL to process his claim, Mr. Hossain remained completely unemployed until early July 2016, when he began working in a pharmaceuticals factory. *Id.* ¶73. While he was unemployed, Mr. Hossain had to borrow $2000 from his roommates and incurred $1000 in credit card debt in order to pay his rent and pay for food. *Id.* ¶74.

Plaintiff Hossain did not receive a determination on his UI claim until September 13, 2016, more than four months after he applied for UI. *See* Neumann Aff. ¶3.

**PLAINTIFF NYTWA**

NYTWA works to ensure the fair treatment of its member drivers and to promote the dignity of all workers in the taxi, limousine, and Black car industries in New York. NYTWA counts among its 19,000 members more than 5,000 Uber drivers. Complaint ¶75. Both Individual Plaintiffs are NYTWA members. *See* Affidavit of Bhairavi Desai ("Desai Aff.") ¶6. NYTWA staff spent substantial time and resources in evaluating the individual plaintiffs' claims for UI benefits and referring them to counsel. *Id.* NYTWA staff regularly assist members with issues related to their work in the for-hire transportation industry, including counseling and guiding members through their claims for unemployment insurance benefits (UI). *Id.* ¶4; Complaint ¶77. NYTWA staff have spent considerable time and resources counseling members who drive for Uber about their rights and remedies in regards to UI. Desai Aff. ¶5. Since Uber misclassifies their drivers as independent contractors rather than employees, applying for UI benefits is more complicated and the assistance provided to Uber drivers is more in-depth. *Id.*

Since this case was filed in July, 2016, NYTWA staff have expended time and resources counseling at least five members who drive for Uber regarding UI benefits. *Id.* ¶7. One of those members, Jeffrey Shepherd, a former Uber driver who applied for UI on or about July 18, 2016, did not receive a determination from the DOL until October 7, 2016 and only after his case was referred to counsel. *Id.* The NYTWA spent many hours counseling and assisting Mr. Shepherd with his UI claim. *Id.*

## ARGUMENT

### I. THE DEFENDANTS' DECISION TO FINALLY ADJUDICATE THE TWO INDIVIDUAL PLAINTIFFS' UNEMPLOYMENT INSURANCE CASES HAS NOT MOOTED PLAINTIFFS' CLAIMS

Article III of the United States Constitution grants the Courts authority to adjudicate "Cases" and "Controversies." *Already, LLC v. Nike, Inc.*, 133 S.Ct. 721, 726 (2013). An "actual controversy" must exist through all stages of the litigation. *Already, LLC,* 133 S.Ct. at 726 (internal citations omitted). A case becomes moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *Id.* citing *Murphy v. Hunt*, 455 U.S.478, 481 (1982). While a defendant may argue that a case is moot where it has ceased the conduct contested by the lawsuit, the "defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167, 189 (2000) citing *City of Mesquite*, 455 U.S. 283, 289 (1982). If Defendants could simply moot out a claim by ceasing the challenged practice, it would leave them free to return to their old ways. *Id.* Therefore, "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc.* 528 U.S. at 189 citing *United States v. Concentrated Phosphate Export Assn.* 393 U.S. 199, 203 (1968).

In the instant case, while the Defendants began to investigate and adjudicate the unemployment claims of Plaintiffs Hossain and Aleksanian after the inception of this lawsuit, there is no indication that the Defendants have stopped what appears to be a general hold on applications for unemployment insurance benefits by former Uber drivers. *See* Neumann Aff.;Complaint ¶53-56. The affidavit submitted by the Defendants fails to indicate that any change has been implemented in Defendant DOL's processing of applications for unemployment insurance benefits by Uber drivers generally. Moreover, even if the Defendants have now started timely investigating and adjudicating all applications for unemployment insurance benefits by former Uber employees, they have provided no assurance that this illegal practice will not recur in the future.

The Courts have laid down a three part test to determine when a voluntary cessation of conduct will moot the controversy. *Bryant v. City of New York*, No. 14-cv-8672, 2016 WL 3766390 (S.D.N.Y. July 8, 2016) citing *American Freedom Defense Initiative v. Metropolitan Transp. Authority*, 815 F.3d 105 (2nd Cir. 2016). First, the challenged conduct must have actually ceased; second, there must be assurance that there is no reasonable expectation that the alleged violation will recur; and third, interim relief or events must have completely and irrevocably eradicated the effects of the alleged violation. *Id.*

The Defendants have completely failed to meet this test. First, in contrast to other UI claimants whose claims are normally investigated and adjudicated within three to six weeks from the time the initial claim is filed, there is no evidence before this court that the DOL has stopped the practice of putting Uber drivers' UI claims on hold. *See* Complaint ¶22, Second, even if the Defendants had demonstrated that this conduct has ceased, they have failed to provide any assurance whatsoever that they will not resume the practice of placing Uber drivers' UI applications on hold in the future. The Individual Plaintiffs have no assurance that they will not face the same failure by the DOL to process their UI applications and issue them UI benefits in the future should they work for Uber and find themselves unemployed again. Third, the Defendants' adjudication of Plaintiffs Aleksanian and Hossain's UI claims has not irrevocably eradicated the effects of putting Uber employee claims on hold either for the individual plaintiffs or for other members of Plaintiff NYTWA, 5,000 of whom are Uber drivers. Absent any indication that the DOL has changed its practice, the fact that these two UI applications have now been processed in no sense demonstrates that other members of Plaintiff NYTWA, who drive for Uber, will not be subjected to this conduct currently or in the future should they need to apply for UI.

Furthermore,

A case becomes moot only when it is impossible for a court to grant "any effectual relief whatever" to the prevailing party. *Knox v. Service Employees Intern. Union, Local 1000,* 132 S.Ct. 2277, 2288 (2012) (internal citations omitted). In the instant case, the court can effectively grant relief well beyond the limited actions that the Defendants have taken to date. The Court could grant relief by ordering the Defendants to immediately investigate and adjudicate all Uber employees' applications and claims for UI benefits. Further, the Court could issue a declaratory judgment finding that the Defendants' actions in failing to investigate and adjudicate both the Individual Plaintiffs' and all Uber drivers' applications and claims for UI benefits violate Title III of the Social Security Act of 1935, 42 U.S.C. §§501-504, the Equal Protection Clause of the United States Constitution, and the Due Process Clause of the United States Constitution. Without this requested relief, Plaintiffs have absolutely no assurance that the conduct at issue will not recur. Because the Court could effectuate relief to the Plaintiffs, the case is not moot. Therefore, Defendants' motion should be denied.

## II. THE NEW YORK TAXI WORKERS ALLIANCE HAS ORGANIZATIONAL STANDING TO BRING THIS PROCEEDING

An organization has standing to sue in its own right where it alleges "such a personal stake in the outcome of the controversy" that federal court jurisdiction is warranted. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982), citing *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977) (internal quotations omitted). As with an individual complainant, an organization must show actual or threatened injury in fact that is "fairly traceable to the illegal action and likely to be redressed by a favorable court decision." *Ragin v. Harry Macklow Real Estate Co*., 6 F.3d 898, 904 (2d Cir. 1993) (internal quotations omitted). Only a "perceptible impairment" of an organization's activities is necessary for an "injury in fact" to exist. *Nnebe v. Daus*, 644 F.3d 147, 157 (2d Cir. 2011) citing Ragin, 6 F.3d at 905) (internal citations omitted); *see also Havens Realty Corp*, 455 U.S. at 379.

In *Havens*, the Supreme Court held that a non-profit organization had suffered an injury in fact if, as alleged, the racial steering practices of a realty corporation impaired its ability to provide counseling and referral services to low-income home seekers. *Havens Realty Corp.* 455 U.S. at 379. In so doing, the Court emphasized the "consequent drain on the organization's resources," finding that such "concrete and demonstrable injury" constituted "far more than simply a setback to the organization's abstract social interests." *Id.* The Court therefore concluded that the district court had improperly dismissed the organization's claims for lack of standing. *Id.*

The Second Circuit in *Nnebe* similarly reversed the district court decision granting summary judgment to the defendants, which held that Plaintiff NYTWA lacked standing because it failed to allege more than an injury to its "abstract social interests." *Nnebe*, 644 F.3d at 154. In *Nnebe*, the NYTWA joined four individual taxi drivers in a challenge to the City's license suspension procedures, alleging standing based on its expenditure of resources in counseling drivers with suspended licenses. The Second Circuit upheld the organization's standing, holding that "[e]ven if only a few suspended drivers are counseled by NYTWA in a year, there is some perceptible opportunity cost expended by the Alliance, because the expenditure of resources that could be spent on other activities 'constitutes far more than simply a setback to [NYTWA's] abstract social interests.'" *Id.* at 157. Citing *Havens*, the Circuit stated that "so long as the economic effect on an organization is real, the organization does not lose standing simply because the proximate cause of that economic injury is 'the organization's noneconomic interest in encouraging [a particular policy preference].'" *Id.*, citing *Havens*, 455 U.S. at 379 n.20. *See also Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 954 F.Supp.2d 127, 134 (E.D.N.Y. 2013) (organization had standing under *Nnebe* where its goals and projects included meeting with day laborers to counsel them and the town ordinance prohibiting solicitation gave organization's members concern that they would be sanctioned).

Here, the NYTWA's injury is similar if not identical to that which the NYTWA alleged in *Nnebe,* as well as the injury to the organizational plaintiffs in *Havens* and *Centro de la Comunidad***.** NYTWA has 19,000 driver members including more than 5,000 members who are Uber drivers. Complaint ¶75. Amongst other services, NYTWA staff assist their members by guiding them through claims for UI benefits. *Id.* 77; Desai Aff. ¶4. Two of its members, the named Plaintiffs, sought assistance from the NYTWA when they lost their jobs with Uber, applied for UI, and waited for months while the Defendants failed to investigate and adjudicate their UI applications. *Id.* ¶6. NYTWA staff spent time and resources evaluating the individual Plaintiffs' claims for UI benefits and referring them to counsel. *Id.* Since the Complaint was filed, NYTWA has spent substantial time and resources counseling at least five additional members regarding UI benefits after separating from employment from Uber. *Id.* ¶7. One of those members, Jeffrey Shepherd, a former Uber driver, who applied for UI on or about July 18, 2016, did not receive a determination from the DOL until October 7, 2016 and only after his case was referred to counsel who advocated on his behalf with the DOL. *Id.* The NYTWA spent many hours counseling and assisting Mr. Shepherd with his UI claim. *Id.*

Given that the NYTWA regularly assists drivers with claims for benefits, it has established that it has standing to demand declaratory relief in order to prevent the likely continuing expenditure of staff time and resources in assisting its member drivers whose UI applications are neither investigated nor adjudicated by Defendant DOL.

*Knife Rights Inc. v. Vance*, 802 F.3d 377 (2nd Cir. 2015), cited by the Defendants to argue that an organization must allege an injury to itself to confer standing, is distinguishable from the instant case. In *Knife Rights*, the plaintiffs brought a § 1983 case to challenge the application of a statute which criminalized the possession of gravity knives. *Knife Rights Inc. v. Vance*, 802 F.3d 377 (2nd Cir. 2015). The organizational plaintiffs, Knife Rights Inc., a membership advocacy organization whose members were allegedly charged or threatened with prosecution for possession of gravity knives, and Knife Rights Foundation, a nonprofit organization which promotes education and research regarding knives and edged tools, argued that they had standing because they incurred expenses in challenging the threatened enforcement of the criminal statute. *Id.* at 381-382, 387-389. The organizational plaintiffs' activities had caused them to incur expenses in the past to oppose the threatened enforcement of an allegedly unconstitutional statute. *Id.* The Second Circuit found that the organizational plaintiffs lacked standing because the injury, involving past infractions as opposed to continuing or future violations of the law, could not be redressed through the prospective declaratory and injunctive relief it sought in the action. *Id.* citing *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013), the Court stated that "they must show that both anticipated expenditures and ensuing harm to their organizations' activities are certainly impending."

In contrast, in the instant case, the injury to the NYTWA is ongoing and will continue into the future because the NYTWA has and will continue to spend time and resources to assist former Uber drivers whose cases are not investigated or adjudicated. Both NYTWA's staff time and its organizational resources continue to be expended on assisting and guiding Uber drivers with unemployment insurance claims that are not adjudicated. As described above, since the complaint was filed, NYTWA has so far counseled at least five members regarding UI benefits after separating from employment with Uber, including member Jeffrey Shepherd who did not receive a determination from the DOL for several months until his case was referred to counsel, who advocated on his behalf with the DOL.

The Defendants also cite *Vietnam Vets v. Shinseki*, 599 F.3d 654 (D.C. Cir. 2010), a D.C. circuit case, which is irrelevant to the facts of this case. In *Vietnam Vets*, the plaintiffs sought a declaratory judgment and injunction challenging the waiting times for the processing of disability benefits claims by the Veterans Administration (VA). The plaintiff organization submitted affidavits from its members, whose disability claims were allegedly pending too long, to establish injury. However, the plaintiff organization intentionally and specifically forswore relief for these individual members. The D.C. Circuit found that the alleged illegality, average claim processing times at different stages being too long, did not cause injury to the affiant members of the organization because the members' injuries were based on their individual processing times, not the average wait time. The Court found that the plaintiff organization lacked associational standing because the member affiants were essentially asserting claims not for themselves but on behalf of others. In contrast, the injury to the NYTWA here is an injury to the organization itself rather than just an injury to others, because the failure of the Defendants to investigate claims means that the NYTWA will continue to spend time and limited resources assisting claimants with their UI claims. Therefore, Plaintiff NYTWA clearly has organizational standing and Defendants' motion should be denied.

## III. THE PLAINTIFFS' CLAIMS AGAINST COMMISSIONER REARDON ARE NOT BARRED BY THE ELEVENTH AMENDMENT

As Defendants acknowledge in their Memorandum of Law, state officials are not immune from official-capacity claims seeking prospective injunctive or declaratory relief. *See Wallace v. New York*, 40 F. Supp. 3d 278, 304 (E.D.N.Y 2014). Plaintiffs are seeking only prospective relief. Therefore, Defendant Commissioner Reardon is not immune from suit in federal court and Plaintiffs' claims against Defendant Reardon should not be dismissed.[1]

## CONCLUSION

For the reasons set forth above, Defendants' motion for dismissal should be denied.

[1] Defendants claim that Plaintiffs have not properly served Defendant Governor Cuomo. Plaintiffs are investigating this claim and, if accurate, Plaintiffs will make a motion to the Court extending their time to serve Defendant Governor Cuomo.

Dated: January 31, 2017
Brooklyn, New York

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